

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ERMITA C. ATKINS,

Plaintiff,

vs.

Case No. 07-CV-559-FHM

MICHAEL J. ASTRUE,
Commissioner, Social Security
Administration,

Defendant.

OPINION AND ORDER

Defendant's Motion to Dismiss Plaintiff's Complaint [Dkt. 24] is before the Court for decision. Plaintiff did not file a brief opposing the motion.

Defendant asserts that because Plaintiff did not timely file a request for a hearing before an Administrative Law Judge she did not exhaust her administrative appeal remedies as required to maintain the instant appeal under 42 U.S.C. § 405(g).

The Court agrees. A dismissal of a disability claim as untimely by an Administrative Law Judge is not a decision on the merits that can be reviewed by the federal district court. The sole jurisdictional basis for review in Social Security cases arises from 42 U.S.C. § 405(g) which provides only for judicial review of final agency decisions. *Brandtner v. Dep't. of Health and Human Servs.*, 150 F.3d 1306, 1307 (10th Cir. 1998). Since Plaintiff did not make a timely request for a hearing before an Administrative Law Judge there is no final decision to review. As a result, this case must be dismissed for lack of jurisdiction.

Defendant's Motion to Dismiss Plaintiff's Complaint [Dkt. 24] is GRANTED.

SO ORDERED this 8th day of October, 2008.


FRANK H. MCCARTHY
UNITED STATES MAGISTRATE JUDGE